

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EMMANUEL OSHO, :
Plaintiff, :
v. : Case No. 3:07-cv-08-KRG-KAP
M. MILLWARD, WARDEN, MOSHANNON :
VALLEY CORRECTIONAL CENTER, :
Defendant :
:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge, after screening the complaint pursuant to 28 U.S.C. § 1915A, filed a Report and Recommendation on March 14, 2007, docket no. 9, recommending that the complaint be dismissed for failure to state a claim and advising plaintiff that to proceed he needed to authorize payment of the \$350 filing fee for an action under the Prison Litigation Reform Act.

The plaintiff was notified, pursuant to 28 U.S.C. § 636(b)(1), that he had ten days to serve and file written objections to the Report and Recommendation. Plaintiff filed objections, arguing that he can proceed by calling his action a habeas corpus petition and paying the \$5 fee applicable to petitions under 28 U.S.C. § 2241. docket no. 10, docket no. 11. That is incorrect. Habeas corpus challenges the fact or amount of a sentence, Wilkinson v. Dotson, 544 U.S. 74, 79-80 (2005), whether the challenge is to the length of imprisonment or the amount of

restitution. Suits under the Prison Litigation Reform Act challenge conditions of confinement. Plaintiff's action challenges the Bureau of Prisons' actions in collecting \$25/month in restitution, not the Eastern District of Virginia's action in imposing restitution as part of plaintiff's sentence, and is therefore a conditions of confinement case.

Upon de novo review of the record of this matter, including the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 29th day of March 2007, it is

ORDERED that the complaint is dismissed for failure to prosecute. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:



KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice by U.S. Mail to:

Emmanuel Osho #70407-083
Moshannon Valley Correctional Center
P.O. Box 2000
Philipsburg, PA 16866-0798